



## Ontario: Revised Statutes

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1927

# c 167 Bulk Sales Act

Ontario

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## CHAPTER 167.

## The Bulk Sales Act.

Interpreta-  
tion.

## 1. In this Act,—

"Creditor."

- (a) "Creditor" shall mean and include a person to whom the owner of any stock as defined by the Act is indebted, whether the debt is due and owing or not yet payable, and shall include any surety and the endorser of any promissory note or bill of exchange who would upon payment by him of the debt, promissory note or bill of exchange in respect of which such suretyship was entered into or such endorsement given, become a creditor of such owner;

"Judge."

- (b) "Judge" shall mean a judge of the county or district court of the county or district in which the owner's stock-in-trade is located at the time of the sale or intended sale thereof;

"Stock."

- (c) "Stock" shall mean,—

(i) stock of goods, wares, merchandise and chattels, ordinarily the subject of trade and commerce;

(ii) the goods, wares, merchandise or chattels in which any person trades, or which he produces or which are outputs of, or with which he carries on any business, trade or occupation; 1917, c. 33, s. 2 (a-c).

"Trustee."

- (d) "Trustee" shall mean any person appointed by the vendor to act as trustee and who has lodged a bond to the judge marked as satisfactory by the judge, by way of security in respect to his trusteeship with the clerk of the county court of the county or district in which the stock is located at the time of the sale or intended sale thereof, or any person appointed by the vendor with the consent in writing of his creditors holding claims of not less than fifty per centum in value of the amount of such claims as shown by the statement (Schedule A) or shall mean such person as shall, on the summary application of any person interested, be appointed as trustee by the senior judge of the county court of the county in which the vendor resides; 1917, c. 33, s. 2 (d); 1927, c. 44, s. 2.

(e) "Vendor" shall mean and include each and every "Vendor." person, firm or corporation owning or claiming to own the stock or any individual share or interest therein. 1917, c. 33, s. 2 (e).

**2.** It shall be the duty of every person who shall bargain for, buy or purchase any stock in bulk, for cash or on credit, before closing the purchase of the same and before paying the vendor any part of the purchase price (save as hereinafter provided), or giving any promissory note or notes or any security for the said purchase price to demand and receive from such vendor, and it shall be the duty of each vendor of such goods to furnish a written statement verified by statutory declaration of the vendor or his duly authorized agent, or if the vendor is a corporation, by the declaration of the president, vice-president, secretary-treasurer or manager of such corporation, which statement is to contain the names and addresses of all the creditors of the said vendor, together with the amounts of the indebtedness or liability due and payable by said vendor to each of said creditors, which said statement may be in the form set forth in Schedule A hereto; Provided, however, that it shall be competent for a purchaser of any stock to pay to the vendor a sum not exceeding \$50 on account of the purchase price for the purpose of constituting a binding agreement for the purchase of such stock, before obtaining such statement as aforesaid. 1917, c. 33, s. 3.

**3.** Whenever any person shall bargain for or purchase any stock in bulk, for cash or on credit, and shall pay any part of the purchase price or execute or deliver to the vendor or to his order, or to any person for his use, any promissory note or other document for or on account of the purchase price of said goods, or any part thereof, without first having demanded and obtained from the vendor or from his agent, a statutory declaration purporting to be such as is provided for in the last preceding section, then such sale shall be deemed to be fraudulent and shall be void as against the creditors of the vendor, unless all the creditors of the vendor are paid in full out of the proceeds of such sale. 1917, c. 33, s. 4.

**4.** Any such purchaser, upon obtaining such statutory declaration, shall either obtain written waiver from the creditors of the vendor hereinafter referred to or shall pay the whole of his purchase money or deliver his promissory note or notes or other documents securing the same into the hands of a trustee for distribution *pro rata* among the creditors of the said vendor, and subject to any preferences provided for by law or by previous contract, such distribution shall be made in like manner as moneys are distributed by an assignee under *The Assignments and Preferences Act*, and in making such distribution all creditors' claims shall be proved in like man-

Purchaser to procure written statement as to creditors of vendor.

Sale without purchaser procuring statement.

Waiver by creditors or application of purchase money to debts of vendor.

Rev. Stat. c. 162.

ner, shall be subject to the like contestation and entitled to the like priorities as in the case of a distribution under the said Act, and the creditors, trustee and debtor shall in all respects have the same rights, liabilities and powers as the creditors, assignee and debtor have under the said Act.

Limitation  
of fees of  
trustees.

(a) The fee of any such trustee shall not exceed three per centum of the total proceeds of such sale which come to his hands, and shall, together with any disbursements made by him, be paid by being deducted out of the moneys to be received by the said creditors, and shall in no event be charged to the debtor.

No prefer-  
ence for  
creditors.

(b) From and after the furnishing of the statement and declaration provided for by this Act, no preference or priority shall be obtainable by any creditor by attachment, garnishee proceedings, contract or otherwise. 1917, c. 33, s. 5.

Sale void if  
waiver not  
procured or  
purchase  
money not  
applied as  
required by  
Act.

5. If such purchaser, upon receiving such statutory declaration, shall fail to observe the requirements of the last preceding section without obtaining the written waiver from creditors hereinafter referred to, then such sale shall be deemed to be fraudulent, and shall be void as against the creditors of the vendor, unless all creditors of the vendor are paid in full out of the proceeds of such sale. 1917, c. 33, s. 6.

What to be  
deemed a  
sale in  
bulk.

6. Any sale or transfer of stock, or part thereof, out of the usual course of business or trade of the vendor, or whenever substantially the entire stock of the vendor is sold or conveyed, or whenever an interest in the business or trade of the vendor is sold or conveyed, such sale, transfer or conveyance shall be deemed "a sale in bulk" within the meaning of this Act; provided, however, that if the vendor produces and delivers to the vendee a written waiver of the provisions of this Act from his creditors having claims of \$50 and over, representing sixty per centum in number and value of the claims of \$50 and over as shown by the said statutory declaration, then the provisions of this Act shall not apply. 1917, c. 33, s. 7.

Proviso.

Sales under  
judicial  
process not  
affected.

7. Nothing in this Act contained shall apply to or affect any sale by executors, administrators, liquidators, receivers, assignees for the benefit of creditors or any public official acting under judicial process. 1917, c. 33, s. 8.

Limitation  
of action  
to set  
aside sale.

8. No action shall be brought or proceedings had or taken to set aside or have declared void any sale in bulk for failure to comply with the provisions of this Act, unless such action is brought within sixty days from the date of such sale or within sixty days from the date when the creditor attacking such sale first received notice thereof. 1917, c. 33, s. 9.



**9.** Upon the application of any person interested, if the vendor has not appointed a trustee, the senior judge of the county court of the county in which the vendor resides, shall by order appoint a trustee, and the judge shall be entitled to a fee of \$1 on every such order. 1917, c. 33, s. 10.

**10.** The bond given by any trustee may be delivered up to be cancelled by the direction of the judge. 1927, c. 44, s. 3.

## SCHEDULE A.

### STATEMENT SHOWING NAMES AND ADDRESSES OF ALL CREDITORS OF

Name of Creditors.	Post Office Add.	Nature of Indebtedness.	Amount.	When Due.
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I, \_\_\_\_\_ of \_\_\_\_\_ in the Province of Ontario, do solemnly declare that the above is, to the best of my knowledge and belief, a true and correct statement of the names and addresses of all \_\_\_\_\_ creditors and shows correctly the amount of indebtedness or liability due, owing, payable or accruing due, or to become due and payable by \_\_\_\_\_ to each of the said creditors. (If the declaration is made by an agent, add: I am the duly authorized agent of the vendor and have a personal knowledge of the matter herein declared to.)

Or if the vendor is a corporation:—

I, \_\_\_\_\_ of \_\_\_\_\_ in the Province of Ontario, do solemnly declare that the above is, to the best of my knowledge and belief, a true and correct statement of the names and addresses of all the creditors of the \_\_\_\_\_ Company, and shows correctly the amount of the indebtedness or liability due, owing, payable or accruing due, or to become due and payable by such Company to each of the said creditors, and that I am the \_\_\_\_\_ of the said Company, and have a personal knowledge of the matter herein declared to.

And I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of *The Canada Evidence Act*.

Declared before me at the \_\_\_\_\_

of \_\_\_\_\_  
in the Province of Ontario,  
this \_\_\_\_\_ day of \_\_\_\_\_  
A.D. 19 \_\_\_\_\_

A Commissioner.

1917, c. 33, Schedule A.